

AMENDED IN SENATE AUGUST 31, 2002

AMENDED IN SENATE JUNE 20, 2002

AMENDED IN ASSEMBLY MAY 2, 2002

AMENDED IN ASSEMBLY APRIL 11, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2578

Introduced by Assembly Member Corbett Shelley
(Coauthors: Assembly Members Alquist, Jackson, Matthews,
Steinberg, and Wayne)
(Principal coauthor: Assembly Member Matthews)
(Coauthor: Senator Dunn)

February 21, 2002

~~An act to add Section 1670.6 to the Civil Code, relating to contracts.~~
An act to add Section 10426 to the Public Contract Code, and to add
Section 352.7 to the Public Utilities Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as amended, ~~Corbett Shelley. Unlawful contracts~~
Contracts: breach of confidentiality: proprietary information.

Existing law provides for the prosecution of specified criminal
actions against persons in violations of public contracts.

This bill would provide that it is a misdemeanor for a contracting
party to intentionally disclose any proprietary information, as defined,
obtained during the negotiation, execution, or performance of a
contract with a state agency or the Independent System Operator when

the contracting party knew or should have known that the disclosure was likely to cause harm.

This bill would, by expanding the definition of a crime, impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law specifies that certain contracts are against the policy of the law and are void.~~

~~This bill would provide that contracts for the purchase of certain goods or services made in response to a solicitation by mail, including electronic mail, are unlawful if the purchaser has not expressly provided to the person or entity soliciting the purchase consent to have his or her account charged, debited, or drawn against, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 1670.6 is added to the Civil Code, to~~
- 2 ~~SECTION 1. Section 10426 is added to Public Contract Code,~~
- 3 ~~to read:~~
- 4 ~~10426. (a) It shall be unlawful for a person to intentionally~~
- 5 ~~disclose proprietary information obtained in the negotiation,~~
- 6 ~~execution, or performance of a consulting services contract, as~~
- 7 ~~defined in Section 10335.5, or an information technology~~
- 8 ~~contract, as defined in Section 11702 of the Government Code,~~
- 9 ~~with a state agency when the contracting party knew or should~~
- 10 ~~have known that the disclosure was likely to cause harm.~~
- 11 ~~(b) A violation of this section shall be punishable as a~~
- 12 ~~misdemeanor and may be prosecuted by the Attorney General or~~
- 13 ~~by a local district attorney in the district in which the disclosure~~
- 14 ~~took place.~~
- 15 ~~(c) (1) For the purposes of this section “proprietary~~
- 16 ~~information” shall include any information agreed by the~~
- 17 ~~contracting parties to be proprietary or any information that is~~
- 18 ~~designated by a contracting state agency to be proprietary. A~~

1 *contracting state agency shall specifically identify in the contract*
2 *any information that is considered to be proprietary. The state*
3 *agency shall make this designation only in cases where the state*
4 *agency has reason to believe that the release of this information*
5 *poses an immediate threat to the health, safety, or welfare of the*
6 *public or the state agency has reason to believe that the*
7 *contracting party intends to sell the information. If the state*
8 *agency makes a designation of proprietary information*
9 *subsequent to the execution of the contract, the state agency shall*
10 *make a good faith effort to amend the contract to incorporate the*
11 *subsequent designation of proprietary information. A contracting*
12 *state agency shall provide written notification to a contracting*
13 *party of any information that, subsequent to the execution of the*
14 *contract, is identified to be proprietary. A contracting party is not*
15 *in violation of this section if that party discloses information prior*
16 *to the receipt of the written notification.*

17 *(2) Any information that is required to be released or disclosed*
18 *by a contracting party pursuant to a legal requirement, including*
19 *an order of a court or regulatory agency, shall not be considered*
20 *a violation of this section.*

21 *SEC. 2. Section 352.7 is added to the Public Utilities Code, to*
22 *read:*

23 *352.7. (a) It shall be unlawful for a person to intentionally*
24 *disclose proprietary information obtained in the negotiation,*
25 *execution, or performance of a consulting services contract, as*
26 *defined in Section 10335.5 of the Public Contract Code, or an*
27 *information technology contract, as defined in Section 11702 of*
28 *the Government Code, with the Independent System Operator*
29 *when the contracting party knew or should have known that the*
30 *disclosure was likely to cause harm.*

31 *(b) A violation of this section shall be punishable as a*
32 *misdemeanor and may be prosecuted by the Attorney General or*
33 *by a local district attorney in the district in which the disclosure*
34 *took place.*

35 *(c) (1) For the purposes of this section “proprietary*
36 *information” shall include any information agreed by the*
37 *contracting parties to be proprietary, or any information that is*
38 *designated by the Independent System Operator to be proprietary.*
39 *The Independent System Operator shall provide written*
40 *notification to a contracting party of any information that,*

1 subsequent to the execution of the contract, is identified to be
2 proprietary. The Independent System Operator shall make this
3 designation only in cases where the Independent System Operator
4 has reason to believe that the release of this information poses an
5 immediate threat to the health, safety, or welfare of the public or
6 the Independent System Operator has reason to believe that the
7 contracting party intends to sell the information. If the
8 Independent System Operator makes a designation of proprietary
9 information subsequent to the execution of the contract, the
10 Independent System Operator shall make a good faith effort to
11 amend the contract to incorporate the subsequent designation of
12 proprietary information. The Independent System Operator shall
13 specifically identify in the contract any information that is
14 considered to be proprietary. A contracting party is not in violation
15 of this section if that party discloses information prior to the
16 receipt of the written notification.

17 (2) Any information that is required to be released or disclosed
18 by a contracting party pursuant to a legal requirement, including
19 an order of a court or regulatory agency, shall not be considered
20 a violation of this section.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 read:

31 ~~1670.6.—(a) Except as provided in subdivision (b), a contract~~
32 ~~for the purchase of a product or service that is made in response to~~
33 ~~a solicitation by mail, including electronic mail as provided in~~
34 ~~subdivision (c), and that is primarily for personal, family, or~~
35 ~~household use, is unlawful if the purchaser has not expressly~~
36 ~~provided to the person or entity soliciting the purchase, at the time~~
37 ~~of the purchase, consent to have his or her account charged,~~
38 ~~debited, or drawn against and the number of the account to be~~
39 ~~charged, debited, or drawn against. However, if payment is to be~~
40 ~~made by credit card, as defined in Section 1747.02, by debit card,~~

1 or from a purchaser's other banking account, the person or entity
2 soliciting the purchase shall obtain from the purchaser at least the
3 last four digits of the account number to be charged, debited, or
4 drawn against and the expiration date, if applicable.

5 (b) This section does not apply to purchases made by cash,
6 money order, or a check written by the purchaser to be drawn on
7 the purchaser's account or purchases where the purchaser is to be
8 billed by invoice.

9 (c) With regard to electronic mail, this section does not apply
10 to a contract for the purchase of a product or service made in
11 response to a solicitation by electronic mail if the purchaser has
12 previously provided his or her account number directly to the
13 person or entity soliciting the purchase.

14 (d) This section does not apply to convenience check offers,
15 firm offers of credit, or balance transfers offered to a purchaser by
16 a lender or financial institution.

17 (e) In cases where the purchaser has expressly consented to a
18 specific purchase, including consenting to terms of that purchase
19 that include subsequent payments to be made by specified means,
20 the person or entity soliciting the purchase shall be deemed to be
21 in compliance with this section with regard to the subsequent
22 payments if subdivision (a) has been complied with. For purposes
23 of this subdivision, "specified means" includes, but is not limited
24 to, charging a credit card on file or making deductions on a
25 specified basis from a bank account.

26 (f) Nothing in this section may be construed to require a person
27 or entity soliciting a purchase to share, transfer, provide, or
28 otherwise transmit the account number, or any part of the account
29 number, provided by the purchaser to another entity, including, but
30 not limited to, a financial institution.